

CIVIL ACTION NO. 1:20-CV-203

¹ The court notes that a federal court adjudicating a state law cause of action, like this one, generally applies the Federal Rules of Evidence. *Klocke v. Watson*, 936 F.3d 240, 244 (5th Cir. 2019) (citing *Hanna v. Plumer*, 380 U.S. 460, 465 (1965)).

sleeping compartment of a U.S. Cryo Carriers, Inc., truck. The other vehicle was driven by Defendant Barrow, the sole owner of Sky Transport. Both vehicles were southbound on U.S. Highway 59 near Shepherd, Texas. Plaintiffs' truck encountered standing water, which splashed onto Barrow's windshield. As a result, Barrow felt his truck hydroplane to the right, causing it to clip the driver's side mirror of Plaintiffs' truck. Barrow's vehicle continued into the right lane after the impact and came to a stop on the right side of the road in high water. Plaintiffs' vehicle slowed and pulled into a nearby gas station.

Plaintiffs have brought causes of action for negligence, negligence per se, and gross negligence and are seeking damages for past and future medical expenses, past and future pain, mental anguish and emotional distress, past and future lost earnings, and exemplary damages. Defendants deny liability for Plaintiffs' alleged injuries and have asserted affirmative defenses, including but not limited to Plaintiffs' contributory negligence and Plaintiffs' violations of the Texas Transportation Code and the Federal Motor Carrier Safety Act ("FMCSA"). Defendants admit that Barrow was operating his truck in the course and scope of his employment for Sky Transport. Furthermore, Sky Transport concedes that it is vicariously liable for the conduct of Barrow.

II. Analysis

In the instant motion, Defendants seek to "strike Plaintiffs' allegations of gross negligence, or bar any reference, testimony or argument thereto as there has [sic] Plaintiffs have presented no

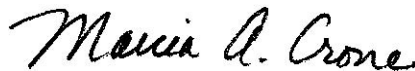
evidence to support this allegation.” Plaintiffs respond that Defendants’ motion is a “thinly veiled request for summary judgment,” which is untimely. The court agrees with Plaintiffs.

Under the court’s Scheduling Order for this case, the Motion Cut-Off deadline was July 16, 2021 (#9). The Scheduling Order states that: “Aside from motions in limine, no motion, including motions to exclude or limit expert testimony, shall be filed after [the Motion Cut-Off deadline] except for good cause shown” (#9). Defendants’ motion, which seeks the court’s ruling on Plaintiffs’ claim of gross negligence, should have been filed by July 16, 2021. Instead, Defendants chose to file their motion on October 18, 2021, less than one month before Jury Selection and Trial are scheduled to begin on November 16, 2021. Defendants offer no explanation—let alone good cause—for their late filing. Thus, the court denies the motion as untimely.

III. Conclusion

Consistent with the foregoing analysis, Defendants’ Motion to Exclude and/or For TRE 104 Ruling Regarding Gross Negligence (#35) is DENIED.

SIGNED at Beaumont, Texas, this 1st day of November, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE